

REMARKS

Claims 1-2 and 4-29 remain pending in the present application. Claims 1, 2, 4-6, 15, 16, 18, and 19 are amended and claims 21-29 are newly added. Support for the amendment to claims 1, 2, 4-6, 15, 16, 18, and 19 can be found, *inter alia*, on pages 1-3 of the specification. Claims 1, 15, 16, 18, 26, and 28 are independent.

Rejections Under 35 U.S.C. § 102

Claims 1-2, 4-8, 10-14, 17 and 18 are rejected under 35 U.S.C. § 102(e) as being anticipated by Parkvall (U.S. Patent No. 6,542,736 B1). Applicants respectfully traverse.

With regard to independent claim 1, Applicants assert that Parkvall fails to disclose receiving, from a mobile station, a plurality of mobile station capabilities; and selecting one of a plurality of transmit configurations using at least one of the plurality of mobile station capabilities received as recited in claim 1. ^{1st argument} Instead, Parkvall discloses that in order to adapt to rapidly changing radio channel conditions, a maximum rate and sector request information is transmitted by the mobile terminal. As the mobile terminal moves or radio channel conditions change, it may be necessary for the mobile terminal to select a new maximum data rate, sector, or base station (Col. 8, line 55-Col. 9, line 10). As disclosed in Parkvall, the mobile station selects a data rate, sector, or base station. Parkvall is silent as to selecting one of a plurality of transmit configurations using information received from a mobile station. Therefore,

Parkvall cannot disclose or suggest receiving, from a mobile station, a plurality of mobile station capabilities; and selecting one of a plurality of transmit configurations using at least one of the plurality of mobile station capabilities received as recited in claim 1. Parkvall fails to disclose each and every element of independent claim 1.

With regard to claim 15, Parkvall fail to disclose receiving, from a mobile station, mobility information of the mobile station and a plurality of transmit configurations; selecting at least one of the plurality of transmit configurations received using the mobility information received as recited in claim 15. As discussed above in the traverse of claim 1, Parkvall discloses a mobile terminal that selects a new maximum data rate, sector, or base station (Col. 8, line 55-Col. 9, line 10). Parkvall is silent as to selecting at least one of the plurality of transmit configurations using mobility information received from a mobile station. Therefore, Parkvall cannot disclose or suggest receiving, from a mobile station, mobility information of the mobile station and a plurality of transmit configurations; selecting at least one of the plurality of transmit configurations received using the mobility information received. Parkvall fails to disclose each and every element of independent claim 15.

With regard to independent claim 16, Parkvall fail to disclose sending, from a mobile station, a plurality of mobile station capabilities; and receiving, by the mobile station, a selected transmit configuration that is based on the at least one of the mobile station capabilities sent as recited in claim 16. As

discussed above in the traverse of claim 1, Parkvall discloses a mobile terminal that selects a data rate, sector, or base station. Parkvall is silent as to receiving, by a mobile station, a selected transmit configuration that is based on at least one of a mobile station capabilities sent from the mobile station. Therefore, Parkvall cannot disclose or suggest sending, from a mobile station, a plurality of mobile station capabilities; and receiving, by the mobile station, a selected transmit configuration that is based on at least one of the mobile station capabilities sent as recited in claim 16. Parkvall fails to disclose each and every element of independent claim 16.

With regard to claim 18, Parkvall fails to disclose sending, from a mobile station, mobility information of the mobile station; and receiving, by the mobile station, a selected transmit configuration as recited in claim 18. As discussed above in the traversal of claim 1, Parkvall discloses a mobile terminal that selects a new maximum data rate, sector, or base station (Col. 8, line 55-Col. 9, line 10). Parkvall is silent as to receiving, by a mobile station, a selected transmit configuration. Therefore, Parkvall cannot disclose or suggest sending, from a mobile station, mobility information of the mobile station; and receiving, by the mobile station, a selected transmit configuration as recited in claim 18. Parkvall fails to disclose each and every element of independent claim 18.

With regard to newly added claim 21, Applicants assert that it is allowable at least because it depends from independent claim 1, which Applicants have shown to be allowable. Additionally, Applicants assert that

Parkvall fails to disclose selecting one of a plurality of transmit configurations using channel quality information and at least one of a plurality of mobile station capabilities received from a mobile station as recited in claim 21. Instead, Parkvall discloses receiving from a mobile station, channel quality information (Col. 5, lines 13-27; Fig.2; Col. 8, lines 65-Col. 9, line 9; Col. 2, lines 47-62; and Col 6, lines 54-67). Applicants point out that the Examiner has used channel quality information and has called it mobile station capability information on page 3 of the Office Action. (However, Applicants assert that claim 21 recites channel quality information and a plurality of mobile station capabilities as being distinct from each other. Therefore, the use of channel quality information as mobile station capability information as suggested by the Examiner, is not appropriate to reject claim 21 in view of Parkvall. Parkvall is silent as to selecting transmit configuration using channel quality information received and at least one of a plurality of mobile station capabilities received from a mobile station as recited in claim 21. Parkvall fails to disclose each and every element of claim 21.

With regard to newly added claim 24, Applicants assert that it is allowable at least because it depends from independent claim 16, which Applicants have shown to be allowable. Further, Parkvall fails to disclose a receiving, by a mobile station, a selected transmit configuration that is based on a plurality of mobile station capabilities sent from the mobile station and channel quality information sent from the mobile station as recited in claim 24.

Instead, Parkvall discloses receiving from a mobile station, channel quality information (Col. 5, lines 13-27; Fig.2; Col. 8, lines 65-Col. 9, line 9; Col. 2, lines 47-62; and Col 6, lines 54-67). Applicants note that the use of channel quality information as mobile station capability information as suggested by the Examiner and discussed above, is likewise not appropriate to reject claim 24 in view of Parkvall. Parkvall is silent as to a selected transmit configuration based on channel quality information sent and at least one of a plurality of mobile station capabilities sent. Therefore, Parkvall cannot disclose or suggest receiving, by a mobile station, a selected transmit configuration that is based on channel quality information sent from the mobile station and at least one of a plurality of mobile station capabilities sent from the mobile station as recited in claim 24. Applicants assert that Parkvall fail to disclose each and every element of claim 24.

With regard to claims 2, 4-8, 10-14, and 17, Applicants assert that claims 2, 4-8, 10-14, and 17 are allowable at least because they depend from at least one of independent claims 1, 16, 21, and 24 which Applicants have shown to be allowable.

For at least these reasons, Applicants respectfully request that the art ground of rejection be withdrawn.

Rejections Under 35 U.S.C. § 103

Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over Parkvall in view of Allpress et al. (U.S. Patent 6,392,988 B1). Applicants respectfully traverse.

As discussed above, Parkvall fails to disclose receiving, from a mobile station, a plurality of mobile station capabilities; and selecting one of a plurality of transmit configurations using at least one of the plurality of mobile station capabilities received as recited in claim 1.

The Allpress et al. reference is directed to a transmitter architecture employing space time spreading and orthogonal transmit diversity techniques. The Allpress et al. reference is silent as to selecting one of a plurality of transmit configurations using information received from a mobile station. Therefore, Allpress et al. cannot disclose or suggest receiving, from a mobile station, a plurality of mobile station capabilities; and selecting one of a plurality of transmit configurations using at least one of the plurality of mobile station capabilities received as recited in claim 1. Claim 1 is not rendered obvious to one skilled in the art by Parkvall in view of Allpress et al. Claim 9 is allowable at least because it depends from independent claim 1.

Applicants respectfully request that the art grounds of rejection be withdrawn.

Claims 19-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Parkvall in view of Lee et al. (U.S. Patent No. 6,456,604 B1). Applicants respectfully traverse.

As discussed above, Parkvall fail to disclose sending, from a mobile station, mobility information of the mobile station; and receiving, by the mobile station, a selected transmit configuration as recited in claim 18.

The Lee et al. reference is directed to a data communication method in a mobile communication system. Lee et al. disclose a method that serves to increase channel efficiency by connecting and releasing channels in accordance with the presence/absence of control and traffic data transmitted during packet data communications (Abstract). Lee et al. are silent as to receiving, by a mobile station, a selected transmit configuration. Therefore, Parkvall cannot disclose or suggest sending, from a mobile station, mobility information of the mobile station; and receiving, by the mobile station, a selected transmit configuration as recited in claim 18. Claim 18 is not rendered obvious to one skilled in the art by Parkvall in view of Lee et al. Claims 19 and 20 are allowable at least because they depend from independent claim 18 which Applicants have shown to be allowable.

Accordingly, Applicants respectfully request that the Examiner withdraw the art grounds of rejection.

CONCLUSION

In view of the foregoing, Applicants submit that claims 1-2 and 4-29 are patentable over the relied upon references, and that the application as a whole is in condition for allowance. Early and favorable notice to that effect is respectfully solicited.

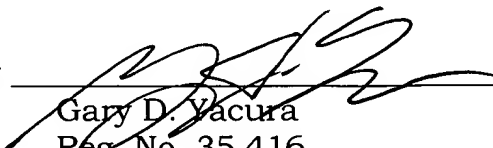
In the event that any outstanding matters remain pending in this application, Applicants request that the Examiner contact the undersigned to discuss such matters.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By



Gary D. Vacura
Reg. No. 35,416

P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

GDY/RFS:ewd